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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/848,465	05/03/2001	Igor Philip Passos Proglhof	J&J-1735	6958

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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT PAPER NUMBER

3761

DATE MAILED: 07/16/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/848,465

Applicant(s)

PROGLHOF ET AL.

Examiner

Jacqueline F Stephens

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 15 and 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 4/23/03 have been fully considered but they are not persuasive. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a core formed from a wet laid paper) are not recited in the rejected claim(s).

Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Claim 1 recites "said core further comprising an absorption sheet and a superabsorbent material adhered to an inner surface of the sheet, said sheet consisting essentially of a wet laid paper". Plischke in col. 26, lines 55-57 describes an absorbent core **41** comprising, not formed from, an absorbent sheet consisting essentially of a wet laid tissue.

Applicant additionally reiterated the sheet is recited as *consisting essentially of a wetlaid paper* and Plischke describes a wetlaid sheet superimposed on a core. For the purposes of applying prior art under 35 U.S.C. 102 and 103, absent a clear indication in the specification or claims of what the basic and novel characteristics actually are, "consisting essentially of" will be construed as equivalent to "comprising." If an applicant contends that additional steps or materials in the prior art are excluded by the recitation of "consisting essentially of," applicant has the burden of showing that the introduction of additional steps or components would materially change the

characteristics of applicant's invention. See *In re De Lajarte*, 337 F.2d870, 143 USPQ 256 (CPA 1964). MPEP 2111.03.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 8, and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Plischke et al. USPN 5977014.

As to claims 1 and 10, Plischke discloses a sanitary absorbent article **40** comprising: an upper layer **50** pervious to liquid; a lower layer **51** impervious to liquid; a transfer layer **42** (col. 16, lines 38-44); and, an absorbing core having an upper part and a lower part, said core further comprising an absorption sheet **41,43** and a superabsorbent material **44** adhered to an inner surface of the sheet, said sheet consisting essentially of a wet laid paper (col. 26, lines 51-57) and comprising two opposite longitudinal sides, each said longitudinal side having been bent onto the inner surface (Figure 9).

As to claims 2 and 11, Plischke discloses the absorbing core is embossed and perforated (Figures 15-18).

As to claims 3 and 12, see Figure 17. 3.

As to claim 8, Plischke discloses the superabsorbent material has a Performance under Pressure capacity value of at least about 23 g/g under a confining pressure of 0.7 psi (col. 24, line 67 through col. 25, line 10).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 4, 5, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Plischke in view of Hoey et al. USPN 3403681 and further in view of Schreiber USPN 2418907. Plischke discloses the present invention substantially as

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claimed. However, Plischke does not disclose the absorbent core comprises 2 to 15 elevations per cm^2 both in the upper part and in the lower part, 2 to 15 perforations per cm^2 both in the upper part and in the lower part. Hoey discloses an apertured absorbent core having apertures spaced at 10 per square inch. Hoey does not disclose the exact aperture range. However, Hoey recognizes the aperture range can be varied and this will affect the liquid distribution and comfort of the pad ('681 col. 4, lines 14-29). Hoey, therefore recognizes the liquid distribution and comfort of the user is a result effective variable of aperture range. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the article of Plischke with the claimed range of apertures, since discovering an optimum value of a result effective variable involves only routine skill in the art.

Plischke/Hoey do not disclose the apertures being present on the upper and lower part of the core. Schreiber discloses an absorbent system with embossed surfaces on upper and lower parts of the core (Figure 3) for the benefit of providing pockets to retain materials in the core ('907 col. 4, lines 18-27). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the invention of Plischke/Hoey with an embossed surface on the upper and lower parts of the core for the benefits disclosed in Schreiber.

7. Claims 6, 7, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Plischke in view of Goldman et al. USPN 5669894.

As to claims 6 and 9, Plischke does not disclose the superabsorbent material

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has an absorbency under load value of at least about 24 ml saline per gram of superabsorbent material and a Saline Flow Conductivity value of at least about $30 \times 10^{-7} \text{ cm}^3 \text{ sec/g}$. Goldman discloses an absorbent article having superabsorbent materials having an absorbency under load value of at least about 24 ml saline per gram of superabsorbent material (col. 4, lines 24-34) and a Saline Flow Conductivity value of at least about $30 \times 10^{-7} \text{ cm}^3 \text{ sec/g}$ ('894 Abstract) for the purpose of minimizing gel blocking. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the superabsorbent of Goldman in the invention of Plischke for the benefits disclosed in Goldman.

As to claim 7, Plischke/Goldman do not disclose the superabsorbent material has a porosity of at least about 0.15. the claimed porosity. However, Plischke/Goldman teaches porosity is an important measurement of the effectiveness of the superabsorbent ('894 col. 13, line 35-63). It is evident that Plischke/Goldman has a value for the porosity. Plischke/Goldman recognizes the porosity can be varied and this will affect the permeability of the article. Plischke/Goldman, therefore recognizes the permeability (SFC) of the superabsorbent layer is a result effective variable of porosity of the superabsorbent. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the article of Plischke/Goldman with the claimed porosity, since discovering an optimum value of a result effective variable involves only routine skill in the art.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (703) 308-8320. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703)308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 306-4520 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Jacqueline F Stephens
Examiner
Art Unit 3761



July 12, 2003



WEILUN LO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700